

OGC HAS REVIEWED.

Contract Section  
Thru: Chief, Services Branch  
General Counsel

28 June 1948

Contract No.

1. Returned herewith is Contract No.  and the accompanying file. STATINTL

2. We wish to comment on one aspect of the Invitation to Bid. We note that the specifications as to each item are stated by reference to the  catalogue numbers with the expression "or equal". There is no criticism of this method of stating specifications as it affords all bidders an opportunity to bid on wares differing in detail but equivalent to what is desired. However, on reviewing the general specifications, it appears that the Invitation states with great definiteness and in great detail characteristics desired, materials, types of finish, measurements and other specifications for all items. These specifications appear to have been taken directly from the  catalogue and to apply specifically to their products. There is no statement in connection with these general specifications indicating that the bidder may have any leeway or a chance to offer a product which may differ in many respects but be perfectly adequate.

3. The Comptroller General has frequently ruled that qualifications on invitations for what may be stated to be a competitive item may in effect restrict the bid to one maker's product and thus in effect eliminate competition. If the attached were read literally, it appears that no one but  could have bid. Since  is to be awarded the contract, this method of invitation might normally be subject to criticism. We note, however, in the responses from the other companies solicited, it appears that they did not take the specifications literally, considering the invitation as a whole, and were in each case unable to make any bid whatsoever. Take, as an example, the answer of the  that they are "unable to quote advantageously on the items required." This might be construed to mean that they could not meet the general qualifications of the invitation, but in the next sentence they ask us to keep them in mind for inquiries on laboratory furniture and miscellaneous items, which is a pretty clear indication that they are not able to bid on library equipment. STATINTL

4. Since all companies other than  are unable to make any bid, we feel that the award to  is quite proper in this instance, and the contract is accordingly approved as to legal form in this instance, with the suggestion that in the future specifications always contain some such phrase as "or equal", or otherwise indicate that comparable items complying substantially with the stated needs may be offered.